

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Maria Finkelstein, et al.

Case No. 15-cv-4149 (WMW/KMM)

Plaintiffs,

v.

**ORDER ADOPTING AS
MODIFIED REPORT AND
RECOMMENDATION**

FDIC, et al.,

Defendants.

This matter is before the Court on the April 26, 2016 Report and Recommendation (“R&R”) of United States Magistrate Judge Leo I. Brisbois. The R&R recommends that this Court dismiss Plaintiffs’ complaint without prejudice because Plaintiffs failed to timely serve their complaint on defendants and prosecute their action. Neither party filed objections to the R&R in the time period permitted. In the absence of timely objections, this Court reviews the R&R for clear error. *See* Fed. R. Civ. P. 72(b); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996).

Plaintiffs commenced this action on November 17, 2015. The Federal Rules of Civil Procedure in effect at that time provided that “[i]f a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m).¹ Here, Plaintiffs’

¹ The Rule was amended, effective December 1, 2015, to provide a 90-day instead of a 120-day window. *See* Fed. R. Civ. P. 4(m).

120-day window elapsed on March 16, 2016. The magistrate judge issued an Order dated March 30, 2016 requiring Plaintiffs to provide proof of service and—consistent with Rule 4(m)—put Plaintiffs on notice that dismissal may result if Plaintiffs failed to comply. *Id.* Plaintiffs did not respond. As a result, the magistrate judge issued an R&R recommending that this Court dismiss Plaintiffs’ complaint unless Plaintiffs provided proof of service or good cause for their delay. Plaintiffs provided no such evidence and did not object to the R&R. Accordingly dismissal of Plaintiffs’ complaint without prejudice for failure to effectuate service is warranted and the Court need not analyze the R&R’s failure-to-prosecute rationale.

Based on the Report and Recommendation, and after a full review of the files, records and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The magistrate judge’s April 26, 2016 Report and Recommendation, (Dkt. 6), is adopted as modified;

2. Plaintiffs’ complaint, (Dkt. 1), is **DISMISSED WITHOUT PREJUDICE**.
LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: June 8, 2016

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge